

95TH CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
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PROVIDING FOR THE CONTINUATION OF THE SELECT COMMITTEE ON ASSASSINATIONS

MARCH 29, 1977.—Referred to the House Calendar and ordered to be printed

Mr. BOLLING, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 433]

The Committee on Rules, having had under consideration House Resolution 433, report the same to the House with the recommendation that the resolution do pass, with the following amendment:

Beginning on page 2, line 8, strike out all of section 4.

BRIEF LEGISLATIVE HISTORY

The Select Committee on Assassinations was originally established in the 94th Congress by passage of House Resolution 1540 by a vote of 280 to 65 on September 17, 1976. The purpose of the select committee was to conduct an investigation of the circumstances surrounding the death of John F. Kennedy and the death of Martin Luther King, Jr. Pursuant to its mandate, the select committee filed a report (H. Rept. 94-1781) on December 31, 1976, representing the results of the select committee's investigation and study since its inception. The report included the recommendations of the select committee with respect to continued investigation by the House of those deaths.

In this Congress, the Select Committee on Assassinations was reconstituted on February 2, 1977, with passage of House Resolution 222 by a vote of 237 to 164. The authority in House Resolution 222 expires on March 31, 1977. The Select Committee on Assassinations was given this short time period to reorganize, to formulate plans for continuing its investigation, to adopt rules of committee procedure, and to prepare a budget that would meet with the approval of the House. On March 28, 1977, the select committee filed its report, which has been printed as House Report 95-119. The report contains a discussion of the conduct of committee business, the rules of procedure adopted by the committee as well as the proposed budget of the committee. Also, the report describes the development of the investigations into the assassinations of President Kennedy and Martin Luther King, Jr., and recommends that the investigation by the House of those assassinations be continued.

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PURPOSES AND SUMMARY OF HOUSE RESOLUTION 433

House Resolution 433 provides for the continuation of the Select Committee on Assassinations established by passage of House Resolution 222 on February 2, 1977. This resolution would continue the select committee for the duration of the 95th Congress.

House Resolution 433 would require the select committee to report to the House as soon as practicable during the present Congress the results of its investigation and study, together with such recommendations as it deems advisable.

Section 3 of House Resolution 433 provides that the provisions of House Resolution 222 shall apply to the select committee during the period of its operation under this resolution, except to the extent such provisions are inconsistent with any provision of this resolution. Also, section 3 of House Resolution 433 authorizes new authority for the select committee to bring, defend, and intervene in lawsuits and make applications to courts. In a memorandum to the Rules Committee, Representative Louis Stokes, chairman of the Select Committee on Assassinations, indicated the need for this authority by stating the following:

House Resolution 222 does not explicitly give the committee authority to sue. Unless the authority has been specifically delegated by the House, a committee cannot bring a lawsuit. *Reed v. County Commissioners*, 277 U.S. 376 (1928) (special Senate committee's suit to obtain election ballots; the resolution establishing the special committee contained language identical to H. Res. 222, i.e., authority to require testimony and other evidence "by subpoena or otherwise"; the Supreme Court held the absence of specific authority to bring lawsuits required dismissal of the suit).

The Senate, in response to the Supreme Court's decision, passed a special resolution authorizing all Senate committees to bring lawsuits. Senate Resolution 262, 70th Congress, first session (1928). This resolution is now part of the Standing Orders of the Senate, see Senate Manual, page 111, and consequently all Senate committees are authorized to bring lawsuits without a specific provision in the resolution establishing each committee.

The House has not passed a comparable resolution or incorporated a committee's authority to sue as part of the rules of the House. As has been noted by one of the leading lawyers on the Senate Watergate Committee on the scope of the investigatory authority of Congress, "a suit by a House committee lacking specific approval by the full House would be amenable to dismissal for lack of delegation".¹ J. Hamilton, "The Power to Probe" at 98 (1976).

¹ Provision in the resolution of authority for the committee to sue does not resolve the independent question of whether a Federal court would have subject matter jurisdiction of any suit brought by the committee. There is no definitive answer to the latter question. But see, *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 386 F. Supp. 51 (D.C.D.C. 1973) finding the court lacked jurisdiction to enforce a Senate committee's subpoena. A special jurisdictional statute for the Watergate Committee was enacted after this decision. However, the authority to sue must be delegated before the jurisdictional question is even an issue. Furthermore, the jurisdictional question only arises in federal courts, and the committee would still need the authority to sue to pursue any lawsuits in or make applications to a State court.

In at least one previous instance the House has apparently recognized the inherent problems of bringing a lawsuit without a specific delegation of authority. In a conflict between the Subcommittee on Oversight and Investigation, the Department of Justice, and A.T. & T. concerning a list of wiretaps subpoenaed from A.T. & T. by the House subcommittee, the Department of Justice sought an injunction in district court against A.T. & T.'s complying with the House subpoena. The subcommittee desired to intervene in the lawsuit, and the House passed a special resolution authorizing the committee to intervene. See House Resolution 1420, 94th Congress, first session (1976). In the absence of such a resolution, it is doubtful the committee would have had authority to intervene in the suit.

The authority for the Assassinations Committee to bring lawsuits may be a crucial tool for securing information needed by the committee. Suits for injunctive or declaratory relief, or the necessity for making applications to courts to secure information might arise in numerous situations. Specific cases where the committee might wish to secure information obtainable only by court order include: (a) grand jury minutes where State statutes permit access only upon application to and receipt of an order from a court; (b) the FBI tapes of Dr. King's conversations that were ordered sealed for 50 years by a district court except for disclosure mandated by a specific order from a court; (c) an injunction to prevent the possible razing of the Brewer roominghouse that has been boarded up in Memphis; and (d) the right to stage a reenactment of an event. Furthermore, there may be instances where it may be preferable for the committee itself to exercise its right to secure evidence from the executive branch of government, rather than having to rely upon the Justice Department to pursue statutory contempt to enforce a subpoena directed at the executive branch.

In addition, the authority to sue would provide the committee with the option to employ a remedy to induce compliance with its subpoenas which is somewhat less severe than citing a recalcitrant witness for contempt of Congress. The committee could apply to a court for an order that the defendant comply with its subpoena. In the event of noncompliance, the court's remedy would be to hold the recalcitrant witness in civil contempt. Whereas contempt of Congress is a criminal sanction which cannot be lifted by one's eventual compliance with the subpoena, see 2 U.S.C. § 192; *Jurney v. MacCracken*, 294 U.S. 125 (1935), civil contempt can be purged at any time by furnishing the information sought in the subpoena.

It is apparent, therefore, that there are many cases where it will be crucial for the committee to have the authority to sue if it is to conduct a complete and full investigation.²

In the event the committee is granted the authority to sue, the committee intends to adopt a rule to control the exercise

of such authority. The proposed rule would be: "Before the committee brings, defends or intervenes in a lawsuit, or makes an application to a court, such action will be authorized by a majority of the committee, a majority being present".

The Parliamentarian, Mr. Brown, has been shown a copy of the proposed resolution which includes the sentence giving the committee authority to sue. He agrees that there are instances where, as a legal matter, this authority would be necessary should the committee desire access to certain types of information.

Funds for the Select Committee on Assassinations would be provided in the usual manner by a resolution reported by the Committee on House Administration and approved by the House.

HOUSE OF REPRESENTATIVES COMMITTEE ACTION

The Committee on Rules, which has original jurisdiction over establishment of House committees, held 1 day of hearings on the resolution on March 28, 1977. Testimony was presented by Representatives Stokes, Devine, and Pickle. On March 28, 1977, the committee ordered House Resolution 433 reported, amended and granted a rule providing for consideration of the resolution in the House as in the Committee of the Whole, by a record vote of 9 to 4 with 2 voting present. The one amendment adopted by the committee deleted section 4 of House Resolution 433 as introduced. Thus, funds for the Select Committee on Assassinations would be provided in the usual manner by adoption of a resolution reported by the Committee on House Administration.

STATEMENT UNDER CLAUSE 2(1)(3) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

A. Oversight statement

The committee made no special oversight findings on this resolution.

B. Budget statement

No budget statement is submitted.

C. Estimate of the Congressional Budget Office

No estimate or comparison was received from the Director of the Congressional Budget Office as referred to in subdivision (C) of clause 2(1)(3) of the House rule XI.

D. Oversight findings or recommendations of the Committee on Government Operations

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (d) of clause 2(1)(3) of House rule XI.

* The "authority to sue" has been used as a generic phrase to encompass the power to "bring, defend and intervene in lawsuits and make applications to courts". The authority to defend lawsuits has been inserted to insure that the committee has the power to oppose any motions to quash its subpoenas or other types of actions that may be brought against it. Although it may not be necessary to insert the specific authority to defend lawsuits, as the committee may have this power even without the specific delegation, it is recommended that it be included so that no question of the committee's authority will arise.